SUPREME COURT.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1961.

No. 105

UNITED STATES OF AMERICA, EX REL.
RAYMOND EVERETT HACKLER,
Petitioner,

vs.

FRANK G. SAIN, SHERIFF OF COOK COUNTY, ILLINOIS,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

DANIEL P. WARD,
State's Attorney of Cook County, Illinois.
EDWARD J. HLADIS,
Assistant State's Attorney,
507 County Building,
Chicago 2, Illinois,
Attorneys for Respondent.

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QUESTION PRESENTED.

The petitioner's statement of the question is too broad. The question should be limited as follows: Is a prisoner in an extradition proceeding detained illegally under a rendition warrant, which, according to State law, includes a defective recital where papers of the extradition file, executed in compliance with the requirements of federal law by officials of the demanding State and introduced into evidence by the prisoner, demonstrate conclusively that he has, in fact, committed a crime in the demanding State and that he is a fugitive from the latter State?

CONSTITUTIONAL PROVISION AND STATUTE INVOLVED.

The applicable constitutional provision involved is Section 2, Article IV of the Constitution of the United States, which is set out in Appendix A (*post*, p. 9). The pertinent federal statute is Section 3182 of the Act of June 25, 1948 (62 Stat. 822; 18 USCA, Section 3182) which is also printed in Appendix A (*post*, p. 9).

ARGUMENT.

The solution to the controversy in this *habeas corpus* proceeding turns on a very narrow issue: Are the federal rights of a prisoner in an extradition proceeding violated when the papers of the extradition file are considered by a court to cure a defective recital in a rendition warrant? We submit that the answer should be in the negative. The adoption of this position by a majority of the Court of Appeals for the Seventh Circuit is consistent with the applicable federal constitutional and statutory enactments on extradition, and , therefore, requires no review by this Court by way of *certiorari.*

I.

THE DECISION BELOW IS CORRECT.

The law of extradition is federal in origin. It is bottomed upon and controlled by the federal constitutional provisions of Section 2, Article IV (*post*, p. 9) and the statutory provisions of Section 3182 of the Act of June 25, 1948 (62 Stat. 822; 18 USCA, Section 3182, *post*, p. 9), which are designed to effectuate the constitutional mandate. The *quantum* or standard of federal rights to be applied in the determination of the claimed illegal detention of the petitioner must necessarily be measured by the cited federal provisions.

In substance, Section 3182 of the Act of June 25, 1948 requires a governor of an asylum State to cause the arrest of a person when the executive authority of any other State or Territory demands such person as a fugitive and "produces a copy of an indictment found or an affidavit made

before a magistrate of any State or Territory, charging the person demanded with having committed treason, felony or other crime, certified as authentic by the governor or chief magistrate of the State or Territory from whence the person so charged has fled, * * *."

These federal provisions oblige the governor of the asylum state to determine, before complying with the extradition demand, whether the person demanded is substantially charged with a crime and whether he is a fugitive from justice. *Roberts v. Reilly*, 116 U. S. 80, 95. This Act provides a complete and summary proceeding for the interstate rendition of fugitives and it should be accorded a liberal construction to achieve the constitutional purpose. *Munsey* v. *Clough*, 196 U. S. 364, 372; *Biddinger* v. *Commissioner of Police*, 245 U. S. 128, 133.

The petitioner does not dispute that these federal requirements have been fulfilled. As noted by the Court below, his own exhibit in the State court proceeding, namely the extradition file, clearly demonstrates that he is charged with a crime in North Carolina and is a fugitive. The petitioner does not deny that the North Carolina authorities transmitted this information to the Governor of the State of Illinois by means of the affidavit of the director of prisons, sworn to before a magistrate, which affidavit was a part of the extradition file.

It is undisputed in this record that the petitioner was accorded every right guaranteed by federal extradition law. Accordingly, the Court below was correct in its determination that none of petitioner's federal rights was violated and that he is not illegally detained.

II.

THERE IS NO IMPORTANT FEDERAL QUESTION.

Although the petitioner does not dispute the fact that all requirements of federal extradition law have been fulfilled, he bases his claim of illegal detention wholly upon the irregularity in the rendition warrant.

It is significant, however, that the Act of June 25, 1948, which controls and defines the petitioner's rights in an extradition proceeding, does not specify the requirements of a rendition warrant. It does not provide for a warrant. Provision for the rendition warrant is made by Section 7 of the Uniform Criminal Extradition Act of Illinois (Laws of Illinois, 1955, p. 1984; Chapter 60, Section 24, Illinois Revised Statutes, 1957). The General Assembly of the State of Illinois properly legislated in the area of interstate rendition so long as its legislation was consistent with federal constitutional and statutory requirements. *Biddinger* v. *Commissioner of Police*, 245 U. S. 128, 134. By the same token, the Supreme Court of Illinois could properly determine that a defective recital in a rendition warrant, *issued pursuant to Illinois and not federal law*, could be cured by the properly executed papers of the extradition file when those papers, introduced into evidence by the petitioner, clearly demonstrate that the Governor of the State of Illinois, consistent with federal law, was legally justified in issuing the warrant and that the petitioner was not deprived of any right under federal extradition law. Those papers, particularly the affidavit of the North Carolina director of prisons, executed before a magistrate, show that the petitioner was, in fact, charged with a crime in North Carolina and is a fugitive.

Accordingly, we submit that this controversy presents a question of the judicial interpretation of an Illinois en-

actment in the field of interstate rendition and not the deprivation of any of petitioner's rights under federal extradition law.

III.

THERE IS NO CONFLICT OF DECISION.

The petitioner has utterly failed to demonstrate any conflict between the decision of the Court below and prior decisions of this Court. The cited cases of *Henry* v. *United States*, 361 U. S. 98 and *Elkins* v. *United States*, 364 U. S. 206, have no relevancy to the law of interstate rendition. Both cases relate to the Fourth Amendment, which expressly deals with searches and seizures and the issuance of search warrants. The rights of a prisoner in an extradition proceeding, however, are defined by Section 2, Article IV of the Constitution of the United States and Section 3182 of the Act of June 25, 1948.

On the contrary, the view adopted by the majority of the Court below finds ample support in federal as well as State decisions. The principle that a defective recital in a governor's rendition warrant can be cured by papers in the extradition file is not novel or unique. *Ex parte Dawson*, 83 F. 306, 309 (C. A. 8); cert. denied 170 U. S. 705; *Collins* v. *Traeger*, 27 F. 2d 842, 844 (C. A. 9); *U. S. ex rel. Silver* v. *O'Brien*, 138 F. 2d 217, 218 (C. A. 7); cert. denied 321 U. S. 766; *In re Romaine*, 23 Cal. 585, 592; *Lacondra* v. *Hermann*, 343 Ill. 608, 614; *State ex rel. Grande* v. *Bates*, 101 Minn. 303, 308; *People ex rel. Jourdan* v. *Donohue*, 84 N. Y. 438, 441; *State ex rel. Sivley* v. *Hackett*, 161 Tenn. 602, 605; *Schriver* v. *Tucker* (Fla.), 42 So. 2d 707, 709; *Harris* v. *State*, 257 Ala. 3, 8.

CONCLUSION.

In view of the foregoing, we respectfully submit that this petition for writ of *certiorari* should be denied.

Respectfully submitted,

DANIEL P. WARD,
State's Attorney of Cook County, Illinois,

EDWARD J. HLADIS,
Assistant State's Attorney,
507 County Building,
Chicago 2, Illinois,
Attorneys for Respondent.

APPENDIX A.

Statutory Provisions Cited and Quoted.

Section 2, Article IV, Constitution of the United States:

> "A person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime."

Act of June 25, 1948, Ch. 645, 62 Stat. 822, Sec. 3182 (18 USCA, Section 3182):

> "Whenever the executive authority of any State or *Territory demands* any person as a fugitive from justice, of the executive authority of any State, District or Territory to which such person has fled, and produces a copy of an indictment found or an affidavit made before a magistrate of any State or Territory, charging the person demanded with having committed treason, felony, or other crime, certified as authentic by the governor or chief magistrate of the State or Territory from whence the person so charged has fled, the executive authority of the State, District or Territory to which such person has fled shall cause him to be arrested and secured, and notify the executive authority making such demand, or the agent of such authority appointed to receive the fugitive, and shall cause the fugitive to be delivered to such agent when he shall appear. If no such agent appears within thirty days from the time of the arrest, the prisoner may be discharged."